UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 658

Case No. 727: ARAIM

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Jerome Ackerman, First Vice-President; Mr. Luis de Posadas Montero, Second Vice-President;

Whereas, on 10 May 1993, Amer Salih Araim, a staff member of the United Nations, filed an application requesting the Tribunal, inter alia:

"...to find that:

...

2. ...the Office of Human Resources Management (OHRM) violated his rights by ignoring the reports of the Panel on Discrimination and Other Grievances dated 1 July 1991, and 1 October 1992, ...

3. ...that the Administration violated [his] rights to receive the full and fair consideration for the vacant relocated D-1 post which was occupied by the Secretary of the Special Committee against Apartheid as well as other vacant D-1 posts in the Secretariat...

4. To order the Secretary-General to submit to the Tribunal a copy of the tapes (or their transcripts) of the two meetings of the Committee on Applications for Review of Administrative Tribunal Judgements held on 1 April 1992, ...

5. To order the Secretary-General to take action immediately to end the discrimination to which the Applicant has been subjected due to his national origin, to give full and fair consideration to the Applicant's candidature for the relocated D-1 post of Secretary of the Special Committee against Apartheid as well as other D-1 posts...

6. To award the Applicant compensation equal to two years base salary for the injury sustained by him..."

Whereas the Respondent filed his answer on 24 November 1993;

Whereas, on 21 June 1994, the Applicant submitted an additional document;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 8 August 1978, on secondment from the Government of Iraq, on a three year fixed-term appointment, as a Political Affairs Officer at the P-4 level, in the Council and Committee Services Section, Security Council and Political Committees Division, Department of Political and Security Council Affairs. On 1 June 1981, he was reassigned to the Committee Services and Research Branch of the Centre against Apartheid, within the same department. On 8 August 1981, after the Applicant's resignation from the service of his government, his appointment was extended for three years. On 1 April 1982, he was promoted to the P-5 level, as Senior Political Affairs Officer, and became Secretary of the ad hoc Committee on the Drafting of the International Convention against Apartheid in Sports and Deputy Secretary of the Special Committee against Apartheid. On 1 May 1984, he received a probationary appointment, which was converted to a permanent appointment on 1 January 1985.

In June 1991, the Secretary of the Special Committee against Apartheid died and the Applicant was appointed Acting Secretary. On 14 August 1991, the Applicant wrote to the Assistant Secretary-General, Office of Human Resources Management (OHRM), expressing an interest in the post. He stated that, in view of his previous experience, the recommendations of the Joint Appeals Board (JAB) and of the Panel on Discrimination and Other Grievances (the Panel on

Discrimination) in a prior case, he assumed his candidacy would be taken into account when the post of Secretary of the Special Committee Against Apartheid was to be filled. He further assumed that the post would be advertised soon.

In a memorandum dated 21 August 1991, the Assistant Secretary-General, Committee Against Apartheid (CAA), requested the Assistant Secretary-General, OHRM, to appoint Mr. Tesfaye Tadesse, former Permanent Representative of Ethiopia to the United Nations, temporarily, to the vacant post of Director, Office of the Assistant Secretary-General and as Secretary of the Special Committee against Apartheid, for seven months. He specified the post requirements, which involved "extensive consultations within and outside the United Nations" and necessitated a profound understanding of developments both in South Africa and in the outside world". This "sensitive political role" made it imperative that the incumbent possess "highly developed diplomatic skills and judgement". He added, "I believe that given the possible changes that the upper echelons of the Secretariat would undergo by the end of February 1992 - changes that might affect also the head of the Centre - it is more appropriate at this stage to fill this post on a temporary basis and allow myself or my successor to make a permanent appointment through the vacancy management process sometime early next year."

In a memorandum dated 3 September 1991, the Assistant Secretary-General, CAA, announced that Mr. Tesfaye Tadesse had been appointed as the Director of the Office of the Assistant Secretary-General and Secretary of the Special Committee against Apartheid.

On 18 September 1991, the Applicant requested the Secretary-General to suspend the decision. Not having received a reply, the Applicant lodged an appeal with the JAB on 18 October 1991, requesting, under staff rule 111.2(f), that the filling of this vacancy through temporary assignment be suspended until the Applicant's appeal was decided. On 31 October 1991, the JAB adopted its report, which recommended:

"...that any action to fill the post in question be suspended until 28 February 1992 or until the Panel submits its recommendation on the substance of the appeal, if earlier. This in no way, however, precludes following the normal procedures for advertising the vacancy."

In a letter dated 7 November 1991, the Director, Office of the Under-Secretary-General for Administration and Management, informed the Applicant as follows:

"The Secretary-General has examined your request for suspension of action in the light of the Board's report. The decision to fill the post temporarily through the appointment of Mr. Tadesse became effective on 3 September 1991. Such decision cannot therefore be stayed. The Secretary-General has decided therefore that your request cannot be accepted."

In its report on the merits of the case dated 29 January 1992, the JAB:

"16. ...noted that the Appellant did not bring sufficient evidence nor did he reveal any facts indicating that the Secretary-General's decision to fill the post in question with an external candidate was made in bad faith or was motivated by prejudice or any other extraneous factors.

...

19. ...trusts that when the vacancy announcement is issued, the Appellant will receive the full and fair consideration to which he is entitled and that the Administration will act in a fair manner regarding the vacancy circulation announcement and the selection process."

On 3 February 1992, the Director, Office of the Under-Secretary-General for Administration and Management, informed the Applicant that the Secretary-General had re-examined the case in the light of the JAB report and had decided to maintain his decision. He added, "[The Secretary-General] wishes to confirm that you should be considered, in accordance with staff rule 104.14(f)(iii) and the relevant provisions of administrative instruction ST/AI/373, for current and foreseeable vacancies in your department, including the

vacancy which will arise in respect of the post which was the subject of your appeal."

On 2 March 1992, the Applicant filed with the Tribunal an application contesting this decision. In its Judgement No. 622, the Tribunal held that the Applicant was entitled to compensation for the injury sustained "by the unjustified procedure in this case [of not advertising the post] which deprived him (as well as other potential applicants), of the opportunity to be considered on the basis of comparative qualifications for the post." (Cf. Judgement No. 622, Araim (1993), paragraph VIII).

On 8 June 1992, the Applicant requested a review of the decision by the Secretary-General to extend Mr. Tadesse's appointment on a monthly basis. Mr. Tadesse was separated from the service of the United Nations on 21 July 1992. Not having received a reply to his request for administrative review, on 29 July 1992, the Applicant lodged a second appeal with the JAB. The JAB adopted its report on 2 February 1993. Its considerations and recommendation read, in part, as follows:

> "Considerations and recommendation
>
> ...
>
> 24. The Panel considered that the decision to extend Mr. Tadesse's appointment on a month-to-month basis was within the discretionary power of the Secretary-General. ...
>
> ...
>
> 26. The Panel trusts that when the selection for the post in question eventually proceeds, the Administration will act fairly regarding the selection of a candidate, and that the Appellant will receive the full and fair consideration to which he is entitled. The Panel also trusts that everyone concerned will be informed of that recommendation.
>
> ...
>
> 27. The Panel makes no other recommendation in support of the appeal."

On 5 April 1993, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him as follows:

> "The Secretary-General ... agrees with the Board's recommendation and wishes to confirm that you will receive full and fair consideration for current and foreseeable vacancies including the post that was the subject of your appeal".

On 10 May 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent failed to advertise the post, in violation of General Assembly resolution 33/143 and administrative instruction ST/AI/338. Mr. Tadesse's appointment was thus illegal.

2. Alleged promises cited by the Secretary of the Committee on Applications for Review of Administrative Tribunal Judgements, to the effect that the Applicant would be given fair and full consideration for a D-1 post as soon as possible, influenced the voting of Member States of the Committee against requesting an advisory opinion from the International Court of Justice.

3. The Applicant was subjected to discrimination, as was confirmed by the Panel on Discrimination in reports adopted on 1 July and 1 October 1991.

Whereas the Respondent's principal contentions are:

1. The initial appointment of Mr. Tadesse did not violate the Applicant's rights, nor did the subsequent extensions.

2. The Applicant was entitled to, and indeed received, full and fair consideration of his candidacy.

3. Allegations of discrimination on grounds of national origin have been investigated and were found to be unsubstantiated. Appeals against that decision are not properly before the Tribunal.

The Tribunal, having deliberated from 21 June to 22 July 1994, now pronounces the following judgement:

I. In a series of cases filed by the Applicant before the Tribunal, certain features are common, although the emphasis put on them has varied from time to time. In the present case, the elements which have been highlighted are: first, the charge that the Respondent has followed a systematic and malicious course of action in order to deny the right of the Applicant to "full and fair" consideration for promotion; second, and related to the first, is the contention that the Respondent carried on a campaign of reprisal against the Applicant because of the numerous cases he has brought against the Administration. Finally, the Applicant finds fault with the JAB for not examining his pleas properly (especially for the production of records of the confidential discussions of the Committee on Applications for Review of Administrative Tribunal Judgements) and for ignoring the findings of the Panel on Discrimination and Other Grievances.

II. All the above factors are mentioned and elaborated by the Applicant to sustain his main contention that, as Mr. Tesfaye Tadesse's first appointment as Secretary of the Special Committee Against Apartheid was illegal ab initio, the extensions given to him from month to month for four months were also illegal. As Mr. Tadesse's continuation prevented the Applicant from being considered for this post, he claims he is entitled to relief or compensation.

III. Mr. Tadesse's appointment, extension and final separation covered the period from 3 September 1991 to 21 July 1992. Inasmuch as the Tribunal's Judgement No. 622 was rendered on 12 November 1993, the Tribunal had knowledge of Mr. Tadesse's extensions. In awarding compensation to the Applicant in this judgement, the Tribunal had taken them into account, as well as the Respondent's justification for them.

IV. Given this background, the Tribunal has to examine whether the Applicant has now produced any new and convincing evidence to add to the consideration the Tribunal had already given to his pleas.

V. The Applicant contends that the Respondent has acted to frustrate any prospects of promotion for the Applicant. He states that by transferring the D-1 post originally attached to the Centre Against Apartheid, and placing it at the disposal of the newly re-structured Department of Political Affairs, the intention of the Respondent was to deny yet another opportunity for promotion to the Applicant. The Tribunal finds no substance in this allegation, and is satisfied that the large-scale reorganization which the Secretary-General decided to introduce was based on broad and changing needs of the United Nations and was not in any way influenced by considerations of the Applicant's advancement. Nor has the Tribunal been given any evidence that the Respondent was pursuing a vendetta against the Applicant. Such an allegation is negated totally by the letter which the Assistant Secretary-General for Human Resources Management sent on 5 August 1992, to the Chairperson of the Appointment and Promotion Board. This letter emphasizes and details the various assurances given to the Applicant for "full and fair" consideration.

VI. It seems to the Tribunal that, in large measure, the Applicant's conclusion is based on what he considers discriminatory treatment referred to in the reports of the Panel on Discrimination and other Grievances. The Tribunal notes that these reports were reviewed later and at great length by persons especially appointed by the Secretary-General to examine "Allegations of Discrimination by Mr. Amer Araim", and they produced a substantial report. The Applicant was involved in this review and irrespective of his reaction, the Tribunal finds nothing to support the view that the Applicant was victimized because of his ethnic origin or other factors.

VII. There remains therefore only one other principal contention of the Applicant, i.e. that in the Committee on Applications for Review of Administrative Tribunal Judgements, some members of the Committee did not press the Applicant's case because of an alleged commitment in his favour made by the Secretary of the Committee, on behalf of the Secretary-General. The Tribunal cannot and will not comment on how or why members vote in committees and similar bodies, and notes that the record of the Committee at the time of the voting shows no commitment on the part of the Respondent that the Applicant would be promoted.

VIII. In view of the above, the Tribunal rejects the application.

(Signatures)

Samar SEN
President

Jerome ACKERMAN
First Vice-President

Luis de POSADAS MONTERO
Second Vice-President

Geneva, 22 July 1994

R. María VICIEN MILBURN
Executive Secretary